IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2722 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PRAVINBHAI R PATEL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 2722 of 2001

MR RAJESH K DESAI for Petitioner No. 1

MS ROHINI ACHARYA, AGP, for Respondents Nos. 1-3

CORAM : MR.JUSTICE A.R.DAVE

Date of decision: 12/12/2001

ORAL JUDGEMENT

Heard learned advocate Shri Rajesh Desai for the petitioner and learned AGP Ms. Rohini Acharya for the respondents. The petitioner has been aggrieved by an

order dated 5.6.2000 whereby he has been reverted from the post of Techncial Assistant to the post of Temporary Survey Mistry.

2. Learned advocate Shri Rajesh Desai has submitted that the petitioner had started working under the respondents as Survey Mistry by an order dated 3.6.1980. Thereafter he was promoted to the post of Temporary Survey Mistry by an order dated 2.12.1980. Thereafter, the petitioner was promoted to the post of Technical Assistant by an order dated 6.8.1983. It has been submitted by him that till the impugned order dated 5.6.2000 was passed, the petitioner was working as Technical Assistant.

3. It has been submitted by the learned advocate that without any justifiable reason the petitioner has been reverted to the post of Temporary Survey Mistry by the impugned order. When the petitioner made an enquiry as to why the impugned order was passed, the petitioner was informed that the petitioner was given promotion to the post of Technical Assistant due to some mistake and when the mistake had been revealed, by an order dated 5.6.2000 the said mistake had been rectified. Being aggrieved by the order of reversion, the petitioner made a representation to the concerned respondent, but the said representation was not replied to and, therefore, the petitioner was constrained to file Special Civil Application No. 11606 of 2000. The said petition was disposed of by an order dated 4.10.2000 whereby the petitioner was directed to make a representation and the respondent authorities were directed to decide the representation in accordance with law. Ultimately, in pursuance of the order passed in Special Civil Application No. 11606 of 2000, a representation dated 22.11.2000 was made by the petitioner and the representation was decided by an order dated 12.2.2001. A copy of the order passed on the representation is at Annexure I to the petition. The petitioner has been informed under the said letter that his promotion to the post of Technical Assistant was not as per the Recruitment Rules and, therefore, he had been reverted. Being aggrieved by the said order passed on 12.2.2001 as well as the order of reversion dated 5.6.2000, the petitioner has filed this petition.

4. Learned advocate Shri Desai has submitted that the impugned order reverting the petitioner from the post of Technical Assistant to the post of Temporary Survey Mistry is bad in law because the petitioner has been reverted after more than 17 years to the post of

Temporary Survey Mistry and that too without affording any opportunity of being heard to the petitioner. It has been submitted by him that if the petitioner had been called upon to show cause as to why he should not be reverted, the petitioner would have satisfied the concerned authority of the fact that the petitioner was, in fact, rightly promoted and several persons, who are similarly situated like the petitioner, are continued in the cadre of Technical Assistant. Had the respondent authorities given such an opportunity to the petitoner, possibly the petitioner would not have been reverted.

5. On the other hand, learned AGP Ms. Acharya has submitted that the petitioner was given promotion to the post of Technical Assistant in violation of the provisions of the Recruitment Rules. As the said mistake was revealed after some time, so as to rectify the mistake, the petitioner was reverted to the post of Temporary Survey Mistry by the impugned order. As per her submission, it was not necessary to hear the petitioner because the petitioner had been wrongly promoted to the higher post and that too in violation of the provisions of the Recruitment Rules. It has been submitted by her that the impugned order dated 5.6.2000 is just, legal and proper and the representation made by the petitioner dated 22.11.2000 had been rightly turned down under letter dated 12.2.2001.

6. I have heard the learned advocates and upon hearing them and upon perusal of the relevant papers, it is crystal clear that before passing the impugned order, the petitioner was never heard. By virtue of the impugned order of reversion, after a period of more than 16 years, the petitioner has been reverted to the post of Temporary Survey Mistry. On account of the said reversion, the petitioner would be adversely affected because his pay would be reduced. The impugned order of reversion is thus having civil consequences which are adverse to the petitioner and, therefore, in my opinion, the petitioner ought to have been heard before passing the impugned order. A show-cause notice ought to have been issued to the petitioner calling upon him to show cause as to why he should not be reverted. In such an event, the petitioner would have got an opportunity to represent his case and after considering his case, the respondent authorities could have taken final decision. As it is not in dispute that the petitioner was not heard before passing the impugned order, the impugned order dated 5.6.2000 is in violation of the principles of natural justice and, therefore, it is quashed and set aside. Needless to say that as the impugned order of

reversion is set aside, the letter dated 12.2.2001 rejecting the representation of the petitioner would also not survive.

7. In view of the above order, the petitoner shall be reinstated in the cadre of Technical Assistant with all consequential benefits. The amount payable to the petitioner shall be paid as soon as possible and preferably within a period of 3 months from the date of receipt of this order by the concerned respondent. It would be open to the respondents to initiate necessary proceedings in accordance with law if it is felt that the petitoner was wrongly promoted.

8. The petition is allowed. Rule is made absolute no order as to costs. D.S. permitted.

(A.R. Dave, J.)

(hn)